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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOSE CORADO-MERLOS, Defendant and Appellant.	A151785 (Sonoma County Super. Ct. No. SCR671365)
THE PEOPLE, Plaintiff and Respondent, v. JOSE CORADO-MERLOS, Defendant and Appellant.	A151788 (Sonoma County Super. Ct. No. SCR685067)

Jose Corado-Merlos was convicted of sexual offenses committed against his then 11-year-old daughter and sentenced to prison for those offenses, as well as for a prior offense for which he had been on probation. He contends his convictions in the later case must be reversed due to the trial court's refusal to make a preliminary determination as to the victim's younger brother's competency to testify and the court's refusal to strike the brother's hearsay statement that the victim had been sexually assaulted. As the probation violation in the earlier case was based on the verdicts in the later one, he contends that if his convictions in the later case are reversed, the revocation of probation must also be reversed. We affirm.

STATEMENT OF THE CASE

In August 2016, while on probation after pleading guilty to charges of injuring a spouse/cohabitant and dissuading a witness by force or threat,[1] appellant was charged with several sexual offenses committed against his daughter, Jane Doe. The charges upon which he was eventually tried were alleged in an amended information filed on March 28, 2017: four counts of lewd and lascivious acts on a child (§ 288, subd. (a)) (counts 1, 2, 4, 5); five counts of dissuading a witness with a prior conviction for dissuading a witness (§ 136.1, subd. (c)(3)) (counts 3, 6, 10, 14, 15); two counts of aggravated lewd acts on a child (§ 288, subd. (b)(1)) (counts 7, 11); two counts of aggravated sexual assault of a child (§ 269, subd. (a)(5)) (counts 8, 12); and two counts of sexual penetration of a child (§ 289, subd. (j)) (counts 9, 13). Each of the counts alleged an enhancement for commission of the offense while on felony probation (§ 1203, subd. (k)), counts 7 and 11 each alleged an enhancement for use of force (§ 1203.066, subd. (a)(1)), and counts 8 and 12 each alleged an enhancement for commission of a violent sex offense (§ 1203.065, subd. (a)).

At the outset of trial, appellant admitted the prior conviction for dissuading a witness and admitted the on-bail enhancements. The jury found him guilty on all counts and, based on those verdicts, the court found him in violation of probation in the prior case. Appellant was sentenced on both the present case and the case for which he had

[1] Appellant had been charged in a complaint filed on September 10, 2015, with first degree burglary (Pen. Code, § 459) (all further statutory references are to the Penal Code unless otherwise indicated), injuring a spouse/cohabitant (§ 273.5, subd. (a)), dissuading a witness by force or threat (§ 136.1, subd. (c)(1)) and misdemeanor cruelty to a child by infliction of injury (§ 273a, subd. (b)). An additional charge of misdemeanor dissuading a witness (§ 136.1, subd. (b)(1)) was subsequently added as count 5. Appellant pled guilty to counts 2 and 5 and, on January 12, 2016, probation was granted and counts 1, 3 and 4 were dismissed with a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754.)

been on probation to a total prison term of 17 years and four months plus 15 years to life.[2]

STATEMENT OF FACTS

Appellant is the father of Jane Doe. On the evening of August 16, 2016, 11-year-old Jane was at home in Santa Rosa with appellant and her six-year-old brother J. Jane testified that appellant called her to come into the bedroom where he and J. were. She told him she was reading, he called her again, and she went into the bedroom. Appellant was drunk. He repeatedly told Jane to lie down in his arms and she eventually "sort of laid down by his feet."

Appellant started touching Jane's "private parts."[3] Appellant held her down on the bed by her hands, put his fingers inside her private parts, touched her breasts and kissed her. He tried to take her clothes off as she tried to keep them on. At some point Jane was able to break free and went to the living room and covered herself with a blanket. Appellant came and dragged her by her hands and feet back to the bedroom as she tried unsuccessfully to get away. Appellant put her on the bed and held her there, touching her private parts with his fingers; she thought he put his fingers inside her private parts, but did not remember how many times. He also touched her chest and kissed her, and afterward she had a mark on her neck. When she was able to break free again, appellant told her to leave and she returned to the living room.

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[2] In the present case, appellant was sentenced to six years on count 1 (lewd act), a concurrent six years on count 2 (lewd act), a consecutive three years on count 3 (dissuasion), concurrent three-year terms on counts 6, 10, 14 and 15, a consecutive two years on count 4 (lewd act), a concurrent two years on count 5 (lewd act), consecutive terms of two years and eight months on counts 7 and 11 (aggravated lewd act), a consecutive indeterminate term of 15 years to life on count 8 (aggravated sexual assault on a child) and a concurrent term of 15 years to life on count 12 (aggravated sexual assault on a child). The court stayed the sentences on counts 9 and 13 (penetration). In the prior case, the court imposed one year for the conviction of corporal injury to a spouse.

[3] Jane stated that it was hard to talk about the incident because "there are a lot of people here." She had a hard time further elaborating on "private parts," but indicated she meant the part of her body "between [her] legs, below [her] stomach."

Jane was afraid to tell anyone what happened because appellant had told her that if she did, "he and I would go to jail" and she believed him. She did not talk to her brother that night or the next morning, and she went to sleep before her mother returned from work. Jane testified that her memory of exactly what happened that night was fresher when she discussed it at the time than it was at trial. She remembered being interviewed and testified that she told the truth about what happened.

Jane testified that the next morning, her brother talked to their mother, who then asked Jane if appellant had touched her. Appellant was there, so she said no. Her mother took her into the living room and Jane said appellant had touched her, and also told her mother about another time it had happened.

Jane testified that the first time appellant touched her was a month or two before the incident above, at a cousin's house. She was sitting on the couch and appellant put his hands on her breasts and her private parts, over her clothes. Appellant told Jane not to tell her mother or he and Jane would both go to jail. They left the cousin's house, appellant driving the car and Jane in the front seat with him. Appellant stopped the car to throw out a beer can and touched Jane's private parts and her breasts. She "was throwing his hands over to the side," which made him stop. Appellant again told her not to tell her mother because if she did she and appellant would go to jail. She did not tell her mother because she was afraid.

On cross-examination, Jane testified that her mother worked Sunday through Thursday nights. Appellant was not working and, while Jane's mother was at work, he would be "[a]t the house drinking" or, if he left the house, "[w]ith his lovers." Jane's mother knew about the other women and would get upset with appellant about them; she would tell him he had to leave but then always let him come back.

Deputy Sheriff Monique Lomas testified that shortly after 11:00 a.m. on August 3, 2016, she responded to a home in Santa Rosa concerning a report of child abuse. Jane's mother, who was upset and appeared to have just been crying, told Lomas that earlier in the morning she had been told by her six-year-old son that her daughter had been sexually assaulted. Lomas spoke with Jane, who told her what had happened the night

before; the details of the conversation, which Lomas related in her testimony, were generally consistent with Jane's trial testimony.[4] Lomas also spoke with Jane's brother. She then contacted Matt Regan, the detective who handles domestic violence and sexual assault cases. At his request, Lomas collected some of Jane's clothes and the family followed her to the Family Justice Center for Jane to be interviewed.

Jane and J. were both interviewed at the Family Justice Center. A DVD recording of Jane's interview was played for the jury. Jane's descriptions of the events of the night before and the prior incidents were generally consistent with her trial testimony, despite some differences in details.[5]

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[4] Lomas testified that Jane told her that about 11:00 p.m. the night before, her father told her to go to the bedroom. She said no, but he raised his voice and told her again, and she went to the bedroom and lay on the floor near the foot of the bed. Appellant told her to get on the bed and, when she said no, grabbed her by her arms, dragged her onto the bed and lay her next to him. He then leaned over, kissed her cheek and lips and touched her breasts under her sweatshirt. She told him no and tried to move away; he ran his hand over the front of her pants, put his hand inside her pants and underwear and touched her vagina. She told him no and was able to move away, get up, go into the living room and lie on the couch. Appellant grabbed her by her legs, pulled her off the couch and told her to go back into the bedroom, where he put her back on the bed, kissed her and touched her breasts. Appellant, naked, pulled off Jane's pants and panties, touched her vagina, put three fingers into her vagina and moved them approximately three times. Jane was telling him no and trying to get away. When she was able to, she went back to the living room couch. Appellant came out, gave her a kiss, then returned to the bedroom, and Jane fell asleep on the couch.

[5] When asked to tell the interviewer why she was there, Jane described a day about a month before, when her father was drinking at his cousin's house and, when Jane sat next to him on the sofa, he started to touch her "private parts" and her breasts, over her clothes. She told him no. As they were driving home, both in the front seat, appellant stopped to throw away the beer he had been drinking, briefly started to touch her private parts and breasts again, and she told him no and pushed his hands away. Appellant told her not to tell her mother about this or both she and appellant would go to jail.

Describing the events of the evening before the interview, Jane said appellant called her to his room and, after first saying no, Jane went into the room. Appellant and J. were watching television in the bedroom and Jane lay down by appellant's feet. Appellant pulled her to lie next to him and tried to pull her pants off as she tried to pull them up, got the pants off, tried to take off her underwear then put his hand under the underwear and his fingers inside her private part. She pulled his arm out, went to the

After her interview, Jane was examined by a nurse from the Sonoma County Sexual Assault Response Team. There was a "suction injury," a red mark, between her left cheek and neck, and a faint circular bruise around her right wrist that was consistent with Jane's report in the interview that appellant grabbed her hands and held them over her head. Examination of the genital area revealed an abrasion, or friction injury, inside the labia majora, and a tiny laceration on her fossa navicularis and posterior fourchette (i.e., at the entry or vestibule). These injuries were consistent with Jane's description of appellant rubbing his hand back and forth on her and putting his finger "in there," although they also could have been caused by something else.[6] DNA swabs were taken

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living room and covered herself entirely with a blanket, but appellant grabbed her leg and arm and dragged her back to the bedroom, as she told him to leave her alone. He put her on the bed, grabbed her face, started to kiss her on her mouth and "put this mark in here on the side" by sucking. He pulled her pants down to her ankles; she tried to pull them back up with her feet because he was holding her hands very tight. Appellant took off his pants. He started to kiss her, lifted her shirt and kissed her breasts and her stomach. Holding her hands with one of his hands, he put three fingers into her privates. This hurt while it was happening but not afterward. She told appellant not to do it, and that he was hurting her. At some point she managed to get partly off the bed but he pulled her back by her sweater. He told her not to tell her mother or she would go to jail. Jane eventually was able to get away when she told appellant she would tell her mother if he did not stop. She went to the living room, and appellant came and kissed her on the cheek.

Jane said that J. was watching what happened. He told their mother what he had seen and when her mother asked, Jane said it was not the truth but then told her the truth. Appellant told Jane to tell her mother that he had not done this and Jane told him that he had "done what he did." Appellant took away her mother's phone because she wanted to call the police, and her mother struck his face. Later, her mother was able to call the police on a different phone.

[6] When asked on cross-examination what else could have caused these injuries, she said "I suppose it could have been caused by something like roughly rubbing with toilet paper, if you had really rough toilet paper. This wasn't what she told me had happened, number one. And number two, for the most part, people don't hurt themselves on their genitalia because they are gentle with that area when you wipe yourself with toilet paper or whatever." She also acknowledged that "if somebody had an intense itching problem . . . you could hurt yourself like that," but she continued that usually "when something itches that bad they usually itch until it bleeds," which there was no indication of in this case.

from Jane's right cheek, where appellant had kissed her, from the suction injury on her left cheek, from both breasts and from her flank, where Jane said appellant had kissed her abdomen, and from the vestibular (genital) area.

Appellant was located that evening by means of location information obtained from his cell phone provider pursuant to a search warrant. He was brought to the sheriff's office, where he was interviewed and a buccal swab and fingernail scrapings were collected. A video recording showed that when left alone in the room after the samples were taken, appellant smelled the fingers on both of his hands.[7] Sheriff's Lieutenant Ruben Martinez testified that when he returned to the interview room and asked appellant if his children were lying, appellant said they were not, and "[appellant's] the one that was lying." Appellant said he made a mistake and explained that he had kissed his daughter on the right cheek and thought about having sex with her, but he stopped himself because he knew it was wrong. He apologized for what he had done. Martinez acknowledged on cross-examination that he had probably told appellant during the interview that he thought appellant had done more, and that the police were going to find his DNA on Jane's breasts and Jane's DNA on appellant's fingers. Appellant said during the interview that he had been drinking that night but was not drunk.

DNA analysis showed that a sample taken from Jane's left cheek had three contributors, one of whom was male, with "strong" evidence that appellant was the male contributor. A sample taken from Jane's left flank had at least two contributors, one of whom was male, but there was insufficient DNA in this sample to allow further interpretation. A vestibular swab taken from Jane showed only her DNA. Jane's DNA was not present in the fingernail scrapings taken from appellant's right hand. Scrapings from his left hand showed at least three DNA contributors, at least one of whom was female, but the analyst was unable to reach any further conclusions.

[7] The officer who collected the buccal swap and fingernail scrapings from appellant testified that nothing used in the collection process would have left any scent or odor on appellant's hands.

An expert on Child Sexual Abuse Accommodation Syndrome (CSAAS) testified about its use as a model to help dispel myths and misconceptions about how children are expected to respond to sexual abuse and understand that abuse often occurs within the context of an ongoing relationship.[8] The witness described the ease with which perpetrators can enlist children to maintain secrecy, the helplessness resulting from the imbalance of power between perpetrator and child, and how children may feel trapped and cope by disassociating, trying to focus on something else to help them ignore what is happening. He testified that it would not be unusual for a child to not disclose being abused by her father if the father told her that he or they both would go to jail if she told. Only about 20 percent of children disclose sexual abuse immediately; 50 to 75 percent do not tell within the first year; and 40 to 60 percent do not tell until they are 18. Minor inconsistencies between a report made soon after a molest incident and testimony given later should not be taken to undermine the credibility of the account, because the passage of time can affect memory for details and children's discomfort with describing the details may affect what they are willing to say in a given setting. Disassociation can also affect a child's ability to recall information.

DISCUSSION

I.

Appellant contends the trial court abused its discretion in refusing to hold a hearing to determine whether J. was competent to testify, and that this refusal resulted in the admission of "potentially unreliable testimony" in violation of appellant's "constitutional due process right to a fundamentally fair trial." (See *Estelle v. McGuire* (1991) 502 U.S. 62, 70, 75.)

Among its in limine motions, the defense had asked the court to hold a competency hearing outside the presence of the jury to determine both Jane's and J.'s competency to testify. When the prosecutor argued in opposition that everyone is

[8] The five components of CSAAS are secrecy, helplessness, entrapment or accommodation, delayed and unconvincing or conflicted disclosure, and retraction or recanting.

presumed competent to testify regardless of age (Evid. Code, § 700) and a special hearing on competency would subject the children to unwarranted "undue harassment and interrogation," defense counsel pointed out that the prosecution had moved for permission to use leading questions due to the child's potential inability to recall or answer questions without going off an a tangent,[9] and argued that it would not be harassing to have the judge question J. about his understanding of truthfulness. The prosecutor then argued that the concerns he had raised in asking to use leading questions had nothing to do with competency, the defense had raised no specific issues about the children's competency and Evidence Code 701, concerning disqualification of witnesses, permits the court to reserve challenges to competency "until the conclusion of the direct examination of that witness." (Evid. Code, § 701, subd. (b).) The court denied the motion for a competency hearing.

J. testified partly in English and partly through a Spanish interpreter. At the outset of his testimony, asked if he knew "why you are here today," J. said "no." After he answered a number of questions about school and activities, he was asked whether he remembered being interviewed at the end of the summer and said "no." Shown a

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[9] Evidence Code section 767, subdivision (b), provides: "The court may, in the interests of justice permit a leading question to be asked of a child under 10 years of age or a dependent person with a substantial cognitive impairment in a case involving a prosecution under Section 273a, 273d, 288.5, 368, or any of the acts described in Section 11165.1 or 11165.2 of the Penal Code."

The prosecutor moved in limine to be allowed to use leading questions with then seven-year-old J., arguing the need for leading questions based on the "common sense" knowledge that children of this age have "shortened attention span" and need for getting "right to the point, instead of jumping around and potentially getting on tangents" or areas of inadmissible evidence. Stating that the goal of various Evidence Code and Penal Code provisions regarding child witnesses is to lessen the burden on the child—in this case a seven-year-old being asked to testify in court against his father about "something horrendous" —the prosecutor argued that "[p]rompting him in generalities" would not be fair to the child or the case because it would "prevent[s] him from being able to just get in and get out and provide the information that he has about our specific inquiry." The court sustained the defense objection, subject to a motion by the prosecution after J. began his testimony, saying the court needed to see J. and evaluate his ability to answer questions before determining whether to permit the use of leading questions.

photograph of himself with a man and a woman, J. testified that he remembered talking to these people but did not remember what he talked to them about. Asked if he talked to them about something he saw happen to his sister, J. said "no." He was then asked if it was hard "to be here talking about that today" and said "yes," then was asked if it made him "sad to think about that" and said "no." The prosecutor showed J. a diagram and asked, "[d]id you make these blue marks on this picture with this lady? Did you draw everywhere your dad touched your sister?"[10] J. said "yes," and again said "yes" when asked if he was telling the truth "when [he] did that." When asked if the picture reminded him of what he talked to the lady about, J. said "no."

On cross-examination, J. said he remembered one time that police came to his house but did not remember the police officer driving somewhere with J., Jane and their mother following in their car. He did not remember being at home while his mother was at work and his father "did something to your sister," and when asked if he recalled seeing his father kiss his sister replied, "[j]ust on the cheek." He said "yes" when asked if he told his mother in the morning that he saw his father kiss his sister on the cheek.

On redirect, J. shook his head when the prosecutor asked if he told his mother about "some other stuff, too," but when the prosecution followed with the question, "Did you specifically tell her that your poppy, your father, had touched the victim during the night and the bed was moving up and down," J. said "yes." Asked if he remembered his father getting mad at him "when you told your mom," J. said, "[h]e was going to slap me." J. then said yes when asked if he told his mother that he saw appellant "holding her arms" and saw him "touch her in all those places on that picture." Asked why he told his mother, J. said (as relayed by the interpreter), "[t]o help his sister." J. nodded affirmatively in response to the questions whether it made him upset "when you saw your dad do that" and whether he thought what he saw his father do to his sister was bad.

[10] The diagram was a picture of a girl, with markings on the left cheek, left breast, left wrist and genital area.

" 'As a general rule, "every person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter." (Evid. Code, § 700; see Pen. Code, § 1321.) A person may be disqualified as a witness for one of two reasons: (1) the witness is incapable of expressing himself or herself so as to be understood, or (2) the witness is incapable of understanding the duty to tell the truth. (Evid. Code, § 701, subd. (a).) The party challenging the witness bears the burden of proving disqualification, and a trial court's determination will be upheld in the absence of a clear abuse of discretion. [Citation.]' " (*People v. Dennis* (1998) 17 Cal.4th 468, 525, quoting *People v. Mincey* (1992) 2 Cal.4th 408, 444.)

Appellant argues that J.'s testimony shows he did not understand why he was in court and did not remember anything about his interview, thus indicating that if the court had held a competency hearing, it likely would have found the child incompetent to testify. Nothing in J.'s testimony, however, indicates that he was not capable of expressing himself coherently or incapable of understanding the duty to tell the truth. When asked innocuous background questions about school and activities, J. had no difficulty answering. While he said he did not remember in response to many questions related to the events, his responses to others were comprehensible and reflected understanding of what he was asked—such as when he was asked whether he recalled seeing his father kiss his sister and replied, "[j]ust on the cheek," and, when asked if he remembered his father getting mad at him when he told his mother, replied, "[h]e was going to slap me." Overall, we cannot agree with appellant's assertion that, based on J.'s testimony, there were "compelling" grounds for the trial court to find him incompetent and the court "may well" have done so if it had held the hearing the defense requested.

Moreover, we see no reasonable possibility that the result of the trial would have been more favorable even if J. had not testified. Appellant argues J.'s testimony was "absolutely essential" to the prosecution's case because it tended to corroborate Jane's. But Jane's testimony was far stronger than J.'s. Jane gave consistent, detailed accounts in her report to the police officer, the forensic interview, and her trial testimony. The jury saw the video recording of the interview and was able to evaluate her credibility based on

that, as well as her testimony in court. The evidence of vaginal injuries, although not conclusive, was consistent with Jane's account, as was the fact that appellant's DNA was present in the sample taken from the hickey on Jane's left cheek. Although defense counsel stated in closing argument that the hickey and the kissing were the "same act," a simple kiss does not leave a mark, and while the hickey was on Jane's left cheek, Lieutenant Martinez testified that appellant said he kissed Jane's right cheek. Appellant's testimony that he was thinking about having sex with his daughter, although he claimed to have stopped himself after kissing her cheek, was damning: In light of the hickey and vaginal injuries, the admission of sexual intent could only have bolstered the case against appellant despite his attempt to limit the scope of the admission.[11] There is virtually no likelihood that a juror unpersuaded by Jane's report to the police, statements in the interview and testimony, the DNA evidence, and evidence of appellant's admission would have been swayed to convict based upon J.'s far less certain testimony. Accordingly, even if we were to find the trial court erred in failing to hold a competency hearing, we would find the error harmless under any standard of review.

II.

Appellant additionally contends the trial court abused its discretion in refusing to strike Deputy Sheriff Lomas's testimony relating J.'s hearsay statement to his mother that Jane had been sexually assaulted.

Prior to trial, the defense had objected to the prosecution's motion to admit J.'s statement as a spontaneous utterance pursuant to Evidence Code section 1240, arguing that the statement was made after J. "slept on it, woke up, and then decided to make a

[11] Appellant's defense, presented through his attorney's argument to the jury, was that he kissed his daughter with sexual intent but did not do any of the other things she claimed. Counsel conceded that appellant was guilty of "some of the crimes" charged—specifically, of kissing her with sexual intent—but argued that Jane exaggerated appellant's misconduct because, with appellant not working, drinking and out with lovers, and her mother working night shifts and upset over appellant's affairs but always allowing him to return after kicking him out, Jane wanted to make sure her allegations were serious enough to not be brushed under the rug.

report to his mother." The trial court agreed and sustained the defense objection. The prosecutor then argued that the statement would be admissible not for its truth but to explain "why another witness did what they did." The court ruled that the witness could be asked whether she received "some information" without specifying the content of that information.

As indicated above, Lomas testified that when she responded to the home, the children's mother told her that "earlier that morning she was told by her six-year-old son that her daughter had been sexually assaulted. Defense counsel objected and moved to strike the quoted statement as "multiple layers of hearsay." The court overruled the objection and advised the jury that the information "is being relayed to you to explain what that witness did next, not that there necessarily was truth in what was stated to her, but rather, how she operated once she received certain information." Lomas was then asked whether she asked the mother for additional details or "shift[ed] the focus of [her] investigation elsewhere," and responded, "I shifted my focus elsewhere." Asked why, Lomas responded, "She didn't have much information so I asked to speak to the victim."

At the next break, defense counsel moved for a mistrial, arguing that Lomas had explicitly related the hearsay statement by J. that the court had ruled inadmissible. The court denied the mistrial motion. Among the jury instructions given before the jury began deliberations was CALCRIM No. 303: "During the trial, certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other. . . . [¶] You have heard testimony of out-of-court statements made by [J.] to his mother from Deputy Lomas. You are not to consider the alleged truth of the statements or its contents. You are to consider this evidence for the limited purpose of explaining what Deputy Lomas did after hearing the statement. You may consider this evidence for that purpose only."

Appellant maintains that the statement was not relevant for the nonhearsay purpose for which the court allowed it to be admitted, arguing that the justification proffered by respondent—that the statement established that the report to the police was not a crank call, there was an identified victim, and Lomas had reason to further

investigate—was undermined by Lomas's testimony that upon hearing this statement, she "shifted [her] focus elsewhere." According to appellant, the testimony created an "intolerable risk that the jury would be unable to consider it only for a limited purpose, and would instead improperly conclude that the hearsay statement provided potent evidence that corroborated Jane Doe's accusations against appellant."

"[A]n appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Waidla* (2000) 22 Cal.4th 690, 723.) "[W]e will not disturb the trial court's ruling 'except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266, quoting *People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)

As in the trial court, respondent maintains that J.'s statement was relevant to explain the next steps in Lomas's investigation. Contrary to appellant's suggestion that any such purpose was undermined by Lomas's testimony that she "shifted [her] focus," the statement explains what Lomas did next: Having been told of a report that Jane had been sexually assaulted, Lomas proceeded to speak with Jane. This logical connection does not necessarily demonstrate that J.'s out-of-court statement had "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Appellant argues that it was not necessary to explain why Lomas did what she did after hearing Jane's mother's report—that is, there was no material disputed fact to make the explanatory statement relevant.

We need not resolve the point, as any error in admitting the statement for this limited purpose was harmless under any standard of review. Appellant views the statement as critical corroboration of Jane's report of sexual assault. It would serve this purpose only if taken as true, however, and the jury was instructed not to consider the truth of the statement. There is no reason not to apply the usual presumption that jurors understand and adhere to the court's instructions. (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.) The statement itself was of limited significance, as it did not reveal how J. came by the information he gave his mother; the statement—that the mother had been

told by her son that her daughter had been sexually assaulted—it did not indicate J. had seen the abuse, only that he reported it had happened.

Appellant argues that the court's refusal to strike Lomas's testimony about the statement resulted in the admission of further damaging evidence, in that J.'s testimony about the statement was admitted only because the court had already admitted the extra-judicial statement. Appellant points out that the prosecutor was permitted to question J. about what he told his mother after the defense asked about it on cross-examination—which, appellant argues, defense counsel would have had no reason to do if the out-of-court statement had not been admitted—and court allowed the prosecutor's further questions on the issue pursuant to Evidence Code section 356.[12] The details of what J. told his mother, however, were not critical. Although J.'s statement to his mother provided corroborating evidence, we have already determined that there is no likelihood the result of the trial would have been more favorable for appellant even if J. had not testified, as the evidence provided by Jane's own testimony and statements to Lomas and the interviewer, supported by the DNA evidence and evidence from the physical examination, was so much stronger than any corroboration J. provided. Additionally, Jane testified that her mother asked her about the abuse after talking with J., and said in her interview both that J. told their mother and that J. was present during the assault and saw it happen. The jury thus would have been aware that J. corroborated Jane's account to some extent even if it was not informed of the content of his statement to his mother. Considered in light of all the evidence, there was no reversible error.

DISPOSITION

[12] Evidence Code section 356 provides: "Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence."

At a sidebar following J.'s cross-examination, the prosecutor asked to be allowed to examine him about the out-of-court statement pursuant to Evidence Code section 356 and, based on the defense cross-examination, was permitted to do so.

The judgment is affirmed.

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Kline, P.J.

We concur:

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Richman, J.

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Miller, J.

People v. Corado-Merlos (A151785, A151788)